

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 7002 - HB 7016

August 21, 2023

SUMMARY OF BILL: Creates a Class E felony offense for recklessly, by any means of communication, threatening to commit an act of mass violence and the threat causes a reasonable expectation or reasonable fear of the imminent commission of an act of mass violence.

The classification is enhanced to a Class D felony if: (1) the violation involves threatening to commit an act of mass violence on the property of a school, a house of worship, or a federal, state, or local government, at a live performance, or at a place that is open to the public and averages 250 or more visitors per day; (2) the defendant has one or more prior convictions for such offense or a Class A misdemeanor threat of mass violence on a school property under Tenn. Code Ann. § 39-16-517; or (3) the defendant has taken a substantial step towards carrying out an act of mass violence.

Requires, as a condition of bail or other pretrial release, a court to order a defendant charged with threatening to commit an act of mass violence to undergo a mental health evaluation to determine whether the defendant poses a substantial likelihood of serious harm to the person or others. Requires the Department of Safety (DOS) to create a behavioral risk assessment, which may be used by the court in determining whether the defendant is a threat to the public.

Authorizes a sentencing court to order a person convicted of threatening to commit an act of mass violence to pay restitution, including costs and damages resulting from the disruption of the normal activity that would have otherwise occurred but for the threat to commit an act of mass violence.

Prohibits a defendant charged with threatening an act of mass violence from being released on bail unless authorized by a judge.

Effective January 1, 2024.

FISCAL IMPACT:

Increase State Expenditures – \$2,766,900 Incarceration
\$508,300/FY23-24/General Fund
\$1,016,600/FY24-25 and Subsequent Years/General Fund

Decrease Local Expenditures – \$3,400/FY23-24
\$6,800/FY24-25 and Subsequent Years

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Assumptions:

New Class E and Class D Felony Offenses:

- The proposed language creates a new Class E felony offense to recklessly threaten to commit an act of mass violence and the threat causes a reasonable expectation or reasonable fear of the imminent commission of an act of mass violence.
- The classification is enhanced to a Class D felony if: (1) the violation involves a threat to commit an act of mass violence on the property of a school, a house of worship, or a federal, state, or local government, at a live performance, or at a place that is open to the public and averages 250 or more visitors per day; (2) if the defendant has one or more prior convictions for such offense or a Class A misdemeanor threat of mass violence on a school property under Tenn. Code Ann. § 39-16-517; or (3) the defendant has taken a substantial step towards carrying out an act of mass violence.
- The proposed legislation further requires a court to order a defendant charged with threatening to commit an act of mass violence to undergo a mental health evaluation as a condition of bail or other pretrial release and prohibits a defendant from being released on bail unless authorized by a judge.
- The number of individuals who will be charged with the offense of threatening an act of mass violence or the number of individuals who will be subject to mental health examinations pursuant to this proposed legislation is unknown.
- Based on information from the Pew Charitable Trust published in June 2022, there are 19 states that have laws allowing local law enforcement to petition civil courts regarding people who may be a danger to themselves or others.
- Most of the laws were passed in the last decade and use of the laws vary greatly by state. For purposes of analysis, the experiences of Florida and California are being used.
- In Florida, which enacted a law in 2018, judges issued close to 9,000 orders in a four-year period resulting in an average of 2,250 orders being issued each year (9,000 / 4 years).
- Based on the 2020 U.S. Census, the state of Tennessee population is approximately 32 percent of the population of Florida; therefore, it is estimated there would be 720 instances where someone in Tennessee could be found to be a danger to themselves or others.
- According to the 2022 paper, *Gun violence restraining orders in California, 2016–2018: case details and respondent mortality*, approximately 28.7 percent of ordered petitions were determined to have been issued in an effort to prevent a public mass shooting.
- A threat of mass shooting in the study is defined as a threat to shoot an unspecified number of people or more than or equal to three people other than oneself. Therefore, this metric is to a large extent aligned with the definition of mass violence in this legislation.
- It is assumed 28.7 percent of the 720 instances where someone in Tennessee could be found to be a danger to themselves or others, or 207 instances will involve a public threat of mass violence (720 x 28.7%).
- Utilizing this data as a proxy for this estimation, it is assumed there could be 207 potential individuals charged with a Class E or Class D felony offense for threatening an act of mass violence under the proposed legislation.

- This analysis assumes that 75 percent, or 155 (207 x 75%), of admissions will be charged with a Class E felony offense of threatening to commit an act of mass violence.
- The average time served for a Class E felony is 0.59 years.
- The proposed legislation will result in 155 admissions annually serving 0.59 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 1.07 percent per year (from 2019 to 2022).
- The weighted average operational costs per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 1,701,800	FY24-25
\$ 1,719,900	FY25-26
\$ 1,738,300	FY26-27

- This analysis assumes that 25 percent, or 52 (207 x 25%), of admissions will be charged with a Class D felony because the offense involved: (1) a threat to commit an act of mass violence on the property of a school, house of worship, or federal, state, or local government, at a live performance, or at a place that is open to the public and averages 250 or more visitors per day; (2) a defendant with a prior conviction; or (3) a defendant that has taken a substantial step towards carrying out an act of mass violence.
- The average time served for a Class D felony is 1.04 years.
- The proposed legislation will result in 52 admissions annually serving 1.04 years.
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 967,700	FY24-25
\$ 1,017,500	FY25-26
\$ 1,028,600	FY26-27

- Pursuant to Chapter 1007 of 2022, recurring costs increases are to be estimated on the highest of the next three fiscal years; therefore, the recurring increase in incarceration costs will be \$2,766,900 (\$1,738,300 + \$1,028,600).

Decrease in Class A Misdemeanors:

- Pursuant to Tenn. Code Ann. § 39-16-517(b), a person who recklessly, by any means of communication, threatens to commit an act of mass violence on school property or at a school related activity commits a Class A misdemeanor.
- Pursuant to Tenn. Code Ann. § 39-16-517(a)(1) and the proposed legislation, mass violence means any act which a reasonable person would conclude could lead to the serious bodily injury or the death of two or more persons.

- The analysis assumes some individuals charged with the new Class D felony offense under the proposed legislation would be charged with a Class A misdemeanor under current law.
- It is reasonably assumed 15 percent, or 7.8 ($52 \times 15.0\%$), of new Class D felony offense under the proposed legislation would be charged with a Class A misdemeanor under current law.
- It is assumed that an individual convicted of a Class A misdemeanor offense will spend an average of 15 days in a local jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- The recurring mandatory decrease in expenditures to local governments is estimated to be \$3,405 [$(7.8 \text{ convictions} \times \$58.21 \times 15) \times 50\%$] in FY23-24 and \$6,811 ($7.8 \text{ convictions} \times \58.21×15) in FY24-25 and subsequent years.

Mental Health and Behavioral Risk Evaluations:

- Based on information previously provided by the Department of Mental Health and Substance Abuse Services (DMHSAS), the cost of a mental health examination is estimated to be \$800.
- The recurring increase in state expenditures to the General Fund for court ordered mental health evaluations is estimated to be \$165,600 ($207 \times \800).
- Based on the *Forensic and Juvenile Court Services Annual Report for the period July 1, 2021 – June 30, 2022 (FY 22)* issued by the DMHSAS, approximately 24 percent of outpatient evaluations are referred for inpatient evaluations over the previous ten fiscal years.
- It is estimated that 24 percent of the total individuals evaluated, or 50 ($207 \times 24\%$) individuals, will be determined to require involuntary inpatient evaluation.
- The average inpatient evaluation cost is estimated to be approximately \$450 per patient per day. The average length of inpatient evaluation is assumed to be 23 days. The recurring increase in state expenditures to the General Fund is estimated to be \$517,500 ($50 \times \450×23).
- Further, approximately 19 percent, or 9.5 ($50 \times 19\%$), of the inpatient evaluations will result in inpatient treatment. The average inpatient treatment cost is estimated to be approximately \$450 per patient per day. The average length of inpatient treatment is assumed to be 78 days. The recurring increase in state expenditures to the General Fund is estimated to be \$333,450 ($9.5 \times \450×78).
- Per the language of the proposed legislation, the DOS is responsible for the creation of the behavioral risk assessments.
- Based on information provided by DOS, the behavioral risk assessment can be created utilizing existing resources; therefore, any fiscal impact is not significant.
- The total increase in state expenditures to the General Fund is estimated to be \$508,275 [$(\$165,600 + \$517,500 + \$333,450) \times 50\%$] in FY23-24 and \$1,016,550 ($\$165,600 + \$517,500 + \$333,450$) in FY24-25 and subsequent years.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal

cases is insignificant. The proposed legislation will not significantly change state or local revenue.

- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal analysis are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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